

## **FINAL STATEMENT OF REASONS**

### **1) The Update to the Initial Statement of Reasons**

There are no changes to the initial statement of reasons with exception to the following:

#### **§20.05. Gender Change**

Subsection (a) in the Initial Statement of Reasons identifies the Medical Information Authorization, form DL 328 as the document required when an applicant is requesting to change his or her gender identification. During the 45-day public comment period, the department reviewed the form and determined that the document needs to not only solicit further information relating to an applicant's gender status but also address concerns relating to physician versus psychologist scopes of practice. Since major modifications were made to the Medical Authorization form DL 328, the department has determined it necessary to change the name and form number to ensure department personnel are distributing and receiving the correct form. Subsection (a) is amended to identify the Medical Certification and Authorization, form DL 329 as the form now required when an applicant is requesting to change his or her gender identification.

The Medical Information Authorization, form DL 328 has been made obsolete and is replaced by the Medical Certification and Authorization, form DL 329. The DL 328 was utilized when an applicant wanted to change his or her name and gender identification based on a transitional or completed gender change. This form allowed the applicant's physician to convey his or her professional opinion as to the applicant's gender identification, demeanor and whether the gender identification is transitional or complete. Once the form was signed by the medical doctor or hospital, the applicant was allowed to apply for a driver license or identification card displaying his or her new name and gender identification. Because the department is now separating the name change process and the gender identification change process, the form DL 329 will allow the department to gather current identification information while allowing a physician or psychologist to certify the applicant's gender identification within their respective scopes of practice.

#### **Medical Certification and Authorization, Form DL 329 (New 08/08)**

Part 1. This portion of the form requires the applicant to include his or her contact information, in accordance with all departmental forms and is authorized by provisions in Articles 3 and 5, Chapter 1, Division 6 of the California Vehicle Code.

Part 2. Certification. This portion of the form requires the applicant to sign under penalty of perjury under the laws of the State of California that the information

provided is true and correct. This certification is in accordance with all departmental forms and is authorized by Vehicle Code section 1652(b).

Authorization. This portion of the form requires the applicant to authorize his or her physician, psychologist, or health service provider, to release medical information to the Department of Motor Vehicles for the purposes of obtaining a driver license or an identification card under his or her preferred gender.

The Authorization portion of the form also includes a statement acknowledging that all records of the department relating to the physical or mental condition of any person are confidential and not open to public inspection per California Vehicle Code section 1808.5.

Part 3 is to be completed by the physician or psychologist licensed in the United States. The physician or psychologist is to state his or her professional opinion relating to the applicant's gender identification, demeanor and gender change status. A statement has been added to this section stating that only a physician shall certify that the gender identification is complete.

Part 4 is also to be completed by a physician or psychologist licensed in the United States. The physician or psychologist is to disclose his or her full name and indicate whether he or she is a physician or psychologist, medical license or certificate number, the issuing state, contact information and the hospital or medical clinic with which he or she is affiliated. The physician or psychologist must identify the date the applicant was examined and the related medical case number.

Part 5 of the form requires the physician or psychologist to certify or declare under penalty of perjury under the laws of the State of California that the information provided is true and correct.

The form also states that the form is void five years from the date of the physician or psychologist certification.

#### Instructions:

This portion of the form gives instructions on completing the form including which party completes each portion and includes a statement that failure to complete all required sections of the Medical Certification and Authorization (Gender Change) form will result in refusal of the Driver License or Identification Card Application and the refusal of a driver license or identification card with the requested gender identity.

Vehicle Code sections 12809(b) and 1300.1 allow the department to refuse to issue or renew a driver license or identification card, respectively, to a person who fails to furnish reasonable additional or material information requested by the department.

Subsection (a) is amended to direct the terms of this section to both first time applicants as well as current driver license or identification card holders. The amended language will now encompass new applicants producing identification documents displaying the applicant's biological gender identification, such as a birth certificate.

Subsection (a) is amended to add language informing the applicant that the form DL 329 will only be accepted if it is submitted within five years from the date of physician or psychologist certification. By establishing a five year term of expiration, the applicant will be required to supply the department with a new certification at the time of each renewal, if the gender change is transitional.

Subsection (b) is amended to update the form name, number and revision date as described in subsection (a).

Subsection (b) is amended to require the physician or psychologist to be licensed in the United States.

Subsection (b)(1) is amended to update the form number.

Subsection (b)(1)(A) is added to allow a physician or psychologist to certify that a gender change is transitional or incomplete. It is within the scope of practice of both a physician or psychologist to certify this information because, at this point, there would be no physical examination.

Subsection (b)(2) is amended to update the form number.

Subsection (b)(2)(A) is added to allow a physician to certify that a gender identification change is complete. To certify that a gender change is complete a physical examination must take place. It is only within a physician's scope of practice to conduct such an examination, therefore, only a physician is permitted to certify that a gender change is complete.

## **2) Imposition of Mandate on Local Agencies or School Districts**

The department's regulatory action amending section 20.04 and adopting section 20.05 in Article 2, Chapter 1, Division 1, of Title 13, does not impose any mandate on local agencies or school districts and imposes (1) no cost or savings to any state agency, (2) no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, (3) no other discretionary cost or savings to local agencies, and (4) no cost or savings in federal funding to the state. No studies or data were relied upon to make this determination.

### **3) Summary of Comments Received and Department Response**

The proposal was noticed on April 18, 2008 and made available to the public from April 18, 2008 through June 2, 2008. No comments were received on the regulatory proposal.

An additional 15-day comment period was held due to the department making modifications to the regulatory language. The 15-day comment period was noticed on November 5, 2008 and made available to the public from November 5, 2008 through November 20, 2008. No comments were received on the modified regulatory proposal.

### **4) Determination of Alternatives**

No reasonable alternative considered by the department, or that has otherwise been identified and brought to the attention of the department, would be more effective in carrying out the purpose for which these regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations. During the rulemaking process, no alternative that would lessen the adverse economic impact on small business was submitted.